IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1376 of 2006
In
SPECIAL CIVIL APPLICATION No. 1521 of 2000
With
CIVIL APPLICATION No. 5092 of 2007
In
LETTERS PATENT APPEAL No. 1376 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PRATAPRAI R VYAS & 33 - Appellants

Versus

STATE OF GUJARAT, THROUGH SECRETARY & 2 - Respondents

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Appearance :
MR MP PRAJAPATI for Appellants.
MR APURVA DAVE, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. ADMIT. At the joint request of the parties, the matter is taken up today for final hearing.

2. The appellants – original petitioners, in all 34, have filed this appeal under Clause 15 of the Letters Patent against the judgment and order of the Learned Single Judge dated 23.03.2006 passed in Special Civil Application No. 1521 of 2000 whereby the said petition was dismissed on the ground of delay and laches.

3. The appellants who have retired from service were the employees of the land records department of Ex Saurashtra State having been appointed between the period from 25.11.1949 and 16.04.1956. The appellants had passed sub service departmental examination prescribed for the department in the Ex Saurashtra State. According to Saurashtra Civil Service (Classification and Recruitment) Rules, 1956 for promotion to the higher post in the then scale of Rs.425 – 700, eligibility criteria was (a) passing of Sub Service Departmental examination and (b) continuous service of four years. The appellants were eligible for promotion, but were not considered on the ground that appellants had not passed Lower Standard Revenue Qualifying Examination. Aggrieved by this action, some of the employees belonging to Ex Saurashtra State land records department filed a petition before this Court being Special Civil Application No. 4151 of 1984. By judgment and order dated 13.12.1996, this Court allowed the petition on the ground that imposition of

a condition of having passed LRQ Examination for promotion to higher post is contrary to the provisions contained in Bombay Reorganization Act, 1960 as it amounts to changing conditions of service applicable to these petitioners before their allocation to Gujarat State for which consent of the Central Government was necessary which was not obtained. The respondents therein were directed to consider the cases of those petitioners for promotion to higher post in the pay scale of Rs.425 – 700 from the date of their juniors were so promoted and to grant consequential benefits with certain conditions. The benefit of the said decision was extended to the petitioners of that petition only.

4. Some other similarly situated employees of Bhavnagar District have also filed a petition for similar relief in this Court being Special Civil Application No. 9242 of 1999. The said petition came to be disposed of by this Court (Coram :- K. A. Puj, J.) on 05.12.2005 by giving direction to the respondents to consider the case of the petitioners

for promotion to the post carrying the pay scale at the relevant time with effect from the date on which their juniors were promoted. The Court has further observed that since the period of time covered by the respondents was too long and the matter was very old, the respondents were required to decide the matters, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of certified copy of the said order or a writ from this Court. The Court has also directed the respondent authorities to see that in case the petitioners or some of the petitioners are found suitable for promotion from the date on which their juniors were promoted, they should be declared as entitled for all consequential benefits i.e., fixation of pay on the promotional post, fixation of their pay in the revised pay scale, if any made, yearly grade increment in the higher pay scale as well as the revision of retiring benefits, as the petitioners have retired by now. The Court has also clarified that the petitioners will be entitled for notional benefits from the date of promotion of their juniors till the date of filing of the

said Special Civil Application but they will be entitled for actual benefit from the date of filing of the said writ petition. The Court has also made it very clear that in case the petitioners or some of the petitioners are not found suitable for promotion by the respondent authorities, in respect of such petitioners, the respondent authorities will pass a reasoned order and a copy of the same may be sent to such petitioners forthwith.

5. It is submitted before the Court that no appeal has been filed against the said decision rendered in Special Civil Application No. 9242 of 1999.

6. Based on the aforesaid two decisions of this Court, Mr. M. P. Prajapati, learned advocate appearing for the appellants has submitted that looking to the long tenure of services of the appellants right from the erstwhile State of Saurashtra and the State of Gujarat, the Learned Single Judge ought to have considered the cases of the appellants for being eligible at par with the other candidates to whom the

benefits were given by this Court by judgment and order in Special Civil Application No. 5181 of 1984 dated 13.12.1996 as well as in Special Civil Application No. 9242 of 1999 dated 05.12.2005. He has further submitted that the juniors of the appellants have been promoted to the higher post of Head Clerk and the appellants have been left out on the ground that they had not passed the L.R.Q. Examination and therefore, they are not eligible for promotion. Mr. Prajapati has further submitted that the Learned Single Judge should have considered that the appellants were employees of the Ex State of Saurashtra under the provisions of the Bombay Re-Organization Act, 1960 and hence, conditions of service applicable before the appointed day in respect of the employees of the Ex State of Saurashtra allocated into the State of Gujarat cannot be varied to their disadvantage except with the approval of the Central Government. The Learned Single Judge ought to have considered the case of the appellants on merits as in the Ex State of Saurashtra, the appellants were eligible for

promotion to the higher post and if they have passed Sub Service departmental examination and had put in four years of continuous service. The imposition of condition of passing LRQ Examination for being eligible for promotion is contrary to the provisions contained in the Bombay Re-Organization Act, 1960. The respondents have not obtained prior approval of the Central Government before imposing the condition of passing the LRQ Examination and therefore also, the case of the appellants ought to have been considered on merits. Mr. Prajapati has further submitted that the appellants have very good case on merit and, therefore also, the Learned Single Judge instead of dismissing the petition on the ground of delay ought to have considered the case on merits and ought to have directed the respondents to consider the case of the appellants on merits as this Court has taken a decision so far as the similarly situated persons are concerned. When the appellants have good case on merits, instead of dismissing their petition on the ground of delay, the Learned Single Judge ought to have directed the

Government to consider the case of the appellants along with the cases of similarly situated persons.

7. He has further submitted that the appellants have no knowledge about other litigation prior to the decision of Special Civil Application No. 5181 of 1984 and, therefore, the appellants were not in a position to approach this Court and hence, there was no delay in approaching this Court. This Court should direct the respondent authorities to consider the cases of the appellants along with similarly situated persons so as to render justice in the matter. He has further submitted that all the appellants have crossed the age of more than 70 years and some of them are of 80 years and if appropriate directions are given to the respondents to consider their cases, they can get the benefits along with similarly situated persons. He has, therefore, submitted that the present appeal should be allowed by giving appropriate directions to the respondent authorities.

8. Mr. Apurva Dave, learned Assistant Government Pleader appearing for the respondents, on the other hand, has submitted that the Learned Single Judge has rightly dismissed the petition on the ground of delay and laches as the appellants have approached to this Court after lapse of many years. There is no plausible explanation as to why they have not approached to this Court in time. Simply because other employees have approached this Court and some orders were passed in their favour, the appellants cannot take advantage of those orders and pray for the same relief. He has, therefore, submitted that no interference may be called for in the order passed by the Learned Single Judge.

9. After having heard learned advocates appearing for the respective parties and after having gone through the relevant service rules and the decision of this Court rendered earlier in similar situation, we are of the view that there was no justification in denying the benefit, only on the ground of delay and laches and that the said judgment was applicable to those

petitioners only. Since the appellants were also similarly situated persons and they have also put on record service and passed the necessary examination, as discussed earlier, the promotional benefit should be given to the appellants. So far as present appellants are concerned, as directed by this Court in the earlier order and judgment, this exercise will have to be undertaken by the respondents.

10. Keeping in mind the entire facts of that case, we hereby direct the respondents to consider the case of the appellants for promotion to the post carrying the pay scale at the relevant time with effect from the date on which their juniors were promoted. Since the period of time covered by the appellants is too long and the matter is very old, the respondents are required to decide the matters, as expeditiously as possible, preferably within a period of 3 months from the date of receipt of certified copy of this order or a writ from this Court. We hereby further direct the respondent authorities to see that in case the

appellants or some of the appellants are found suitable for promotion from the date on which their juniors were promoted, they should be declared as entitled for all consequential benefits i.e., fixation of pay on the promotional post, fixation of their pay in the revised pay scale, if any made, yearly grade increment in the higher pay scale as well as the revision of retiring benefits, as the appellants have already retired. We hereby clarify that the appellants would be entitled for notional benefits from the date of promotion of their juniors till the date of filing of the Special Civil Application and they would be entitled for actual benefit from the date of filing of the writ petition before this Court. We also make it very clear that in case the appellants or some of the appellants are not found suitable for promotion by the respondent authorities, in respect of such appellants, the respondent authorities will pass a reasoned order and a copy of the same may be sent to such appellants forthwith.

11. Subject to the aforesaid directions and observations,

this appeal is allowed without any order as to costs.

12. In view of the order passed in the Letters Patent Appeal, Civil Application does not survive and it is accordingly disposed of.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya